

General Information Letter: Withholding on nonresident alien farm workers.

July 13, 1998

Dear:

This is in response to your letter dated June 22, 1998, in which you request a General Information Letter. Your letter contained questions involving a variety of tax fields. This letter will only contain an answer to the income tax question. The other questions will be answered by the corresponding areas of the department. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the information you have provided requires that we respond with a general information letter.

In your request you stated:

We request a determination of whether wages paid to nonimmigrant aliens temporarily admitted into the United States to perform work in agriculture, pursuant to the H-2A provisions, are subject to Illinois income tax withholding.

The wages of H-2A workers are excluded from federal income tax withholding per §3401(a) and from FICA per §3121(a) and (b) of the Internal Revenue Code.

Section 701 of the Illinois Income Tax Act ("IITA") requires withholding on compensation paid in the State by "[e]very employer maintaining an office or transacting business within this State and required under the provisions of the Internal Revenue Code to withhold a tax on " such compensation.

Accordingly, if the wages paid to nonimmigrant aliens meet the requirements to be exempt from withholding as detailed in §3401(a) or are not paid "wages" as defined by §3121(a) or (b), and if federal withholdings are not required under any other provision, then there would not be any requirement to withhold Illinois income taxes from wages earned in Illinois.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Sincerely,

Charles E. Matoesian
Associate Attorney (Income Tax)